

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-2479

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IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Appellant,
v.
GREENE BERRY MULLENS,
Appellee.

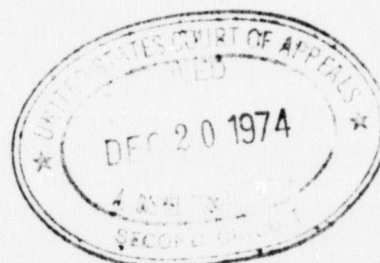
ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF NEW YORK
CRIMINAL 1973-375.

APPENDIX

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Western District of New York,
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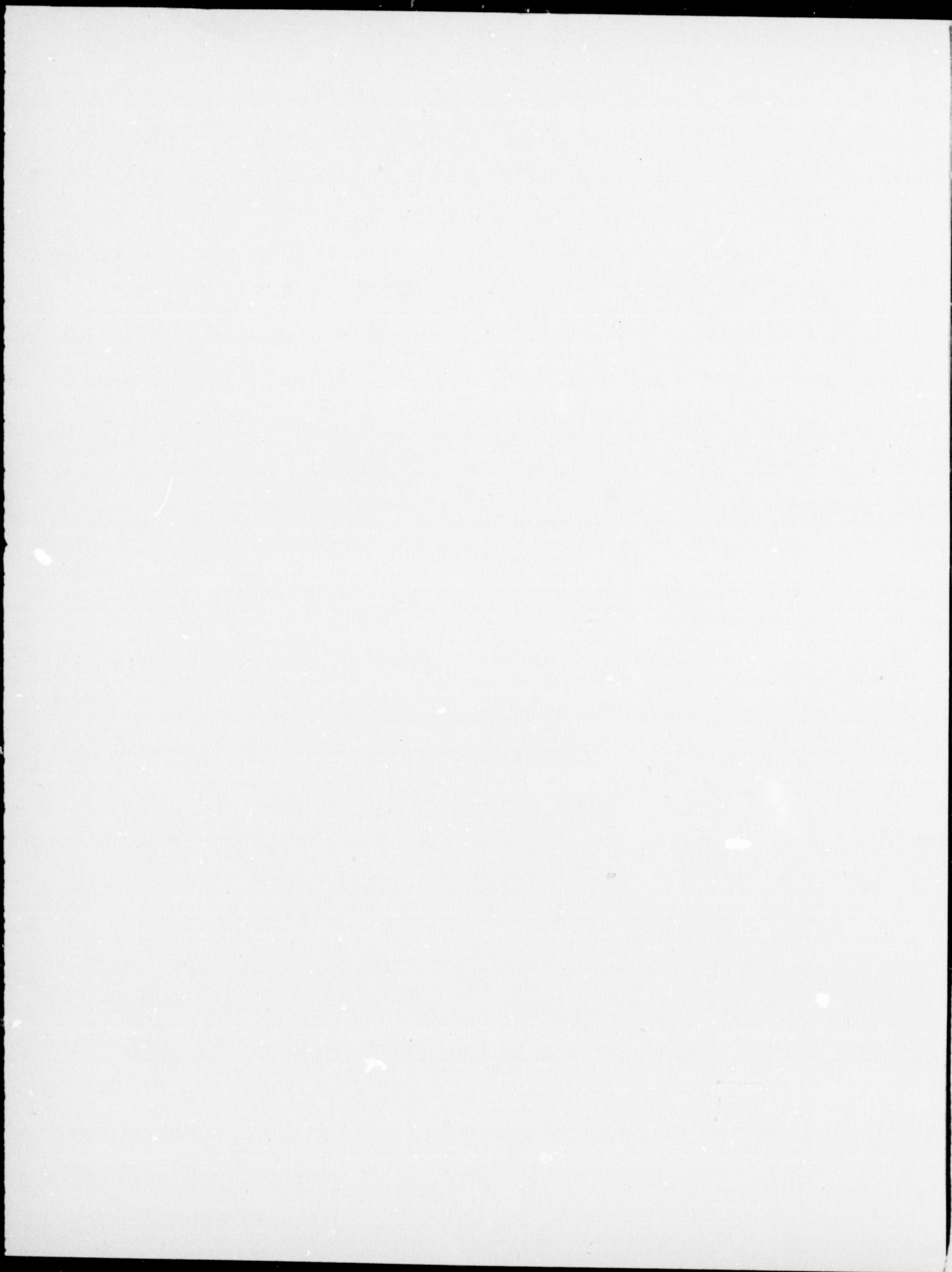
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Search Warrant.

CT-314 REV

Search Warrant

City Court of Buffalo

County of Erie

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK:

TO ANY PEACE OFFICER IN THE CITY OF BUFFALO, THE COUNTY OF ERIE:

Proof by affidavit (or deposition) having been made this day before
me by Det. Sgt. James E. Hunter

that there is probable cause for believing that certain property
To wit; counterfeit \$10.00 bills and or plates for the printing of same
and other materials used for counterfitting

You are therefore commanded, in the daytime, or at any time of the
day or night, to make an immediate search of 1536 Jefferson Ave.

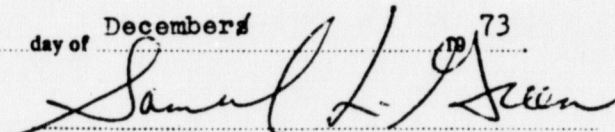
occupied by Barry Mullens and family

and of the person of the said Barry Mullens

and of any other person who may be found to have such property in his
possession or under his control or to whom such property may have been
delivered for concealment and or safe-keeping

and if you find any such property or any part thereof to bring it
before me at the City Court of Buffalo, 42 Delaware Avenue, Buffalo,
New York.

Dated at the City of Buffalo, the 7th day of December 1973


Judge of the City Court of Buffalo.

The City Court of Buffalo

SEARCH WARRANT

AGAINST

No.

Street

STATE OF NEW YORK

County } ss.

Search Warrant.

being duly sworn, deposes and says, that he is acquainted with the handwriting of the magistrate issuing the within warrant, and knows the same to be his signature.

by

Sworn and subscribed to before me, this

day of ..., 19 ...

THIS WARRANT MAY BE EXECUTED IN THE

County of ... on Sunday or at Night

Judge of the City Court of Buffalo.

COMPLAINANT

Inventory of property taken on the 7th day of December 19 73, from
1563 Jefferson Ave.

\$11,680.00 in counterfeit money \$10.00 and \$20.00 bills turned over
to the Secert Service

I, James E. Hunter the officer by whom this warrant was
executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on
the warrant.

Sworn and subscribed before me, this 17th day of Decemebr 1973

San L. Green
Judge of the City Court

Search Warrant.
AFFIDAVIT FOR

CT-327; REV

Search Warrant

City Court of Buffalo
County of Erie

IN THE MATTER
of

the application of James E. Hunter, a member of the Buffalo Police Department, assigned to the Homicide Bureau 5434 or Precinct, for a warrant authorizing the search of 1536 Jefferson Ave. occupied by Barry Mullens and of the person of Barry Mullens and of any other person who may be found to have such property in his possession or under his control, or to whom such property may have been delivered for concealment and/or safe-keeping

STATE OF NEW YORK
COUNTY OF ERIE
CITY COURT OF BUFFALO } ss.

James E. Hunter

being duly sworn, deposes and says:

1. I am Det. Sergeant a member of the Buffalo Police Department assigned to the Homicide Bureau
2. I have information based upon a reliable informant known to me for several years who in the past has given me information that has lead to arrest and ~~convictions~~ convictions of other persons that he gave me information on, has informed me that the above named person residing at the above named address has several hundred \$10.00 bills counterfeit that he is attempting to sell and pass the same. This informant gave information that led to the arrest and conviction of one Ronald Kohlman for bank robbery December 1971 Judge Curtin. Also that on December 5, 1973 informant did see a suit case with the said bills in it at the above address and in the possession of Barry Mullens.
3. Based upon the foregoing reliable information (and upon my personal knowledge) there is probable cause to believe that such property To wit: the said counterfeit \$10.00 bills will be found at 1536 Jefferson Ave. in the upper flat of the 2 story green and white clap-board building with a store front on the ground floor on the West side of the street at Brunswick Blvd. may be found in the possession of Barry Mullens at 1536 Jefferson Ave. or in any part of the building under his control.

WHEREFORE, I respectfully request that the Court issue a warrant and order of seizure, in the form annexed, authorizing the search of

Barry Mullens

and/or 1536 Jefferson Ave.

and directing that if such property or evidence or any part thereof be found that it be seized and brought before the Court; together with such other and further relief that the Court may deem proper.

No previous application in this matter has been made in this or any other court or to any other judge, justice or magistrate.

Sworn to before me this 7th

day of December

1973

James E. Hunter

Clerk of the City Court of Buffalo
3-160

Decision and Order.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

Plaintiff

-vs-

CR-1973-375

GREENE BERRY MULLENS,

Defendant

DECISION
and
ORDER

CURTIN, DISTRICT JUDGE

Decision and Order.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

-vs-

CR-1973-375

GREENE BERRY MULLENS,

Defendant

APPEARANCES: JOHN T. ELFVIN, Esq., United States Attorney (ROGER P. WILLIAMS, Esq., of Counsel), Buffalo, New York, for the Government.

THIELMAN & LALIME (JAMES L. LALIME, Esq., of Counsel), Buffalo, New York, for Defendant.

The defendant in this case is charged in a two-count indictment with falsely making counterfeit obligations of the United States, in violation of Title 18, United States Code, Section 471, and with possession of counterfeit and falsely made obligations of the United States, in violation of Title 18, United States Code, Section 472.

The defendant has moved to suppress the fruits of a search of 1536 Jefferson Avenue in the City of Buffalo, conducted pursuant to a Buffalo City Court

Decision and Order.

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search warrant issued on the same day as the search, December 7, 1973. The suppression hearing was held before this court on May 14, 1974. The court has reviewed the transcript and the briefs supplied by the parties. The following constitutes the court's findings of fact and conclusions of law.

On December 7, 1973, Detective Sergeant James E. Hunter, of the Buffalo Police Department, made application for and obtained a search warrant for a search of the premises located at 1536 Jefferson Avenue, Buffalo, New York. The search warrant was obtained on the basis of information set forth in Sergeant Hunter's affidavit, which information he had obtained from an unidentified informant on December 6. The affidavit for the search warrant stated in relevant part:

I have information based upon a reliable informant known to me for several years who in the past has given me information that has lead [sic] to arrest [sic] and convictions of other persons that he gave me information on, [sic] has informed me that the above named person residing at the above named address has several hundred \$10.00 bills counterfeit that he is attempting to sell and pass the same. This informant

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gave information that led to the arrest and conviction of one Ronald Kohlman for bank robbery December 1971 Judge Curtin. Also that on December 5, 1973 informant did see a suit case [sic] with the said bills in it at the above address and in the possession of Barry Mullens.

At approximately 10:30 a.m. that same day, Sergeant Hunter, accompanied by two policewomen and four police officers from the Buffalo Police Department, and two Secret Service agents, proceeded to the premises located at 1536 Jefferson Avenue which were occupied by James Mullens and his wife, parents of the defendant. Sergeant Hunter informed them that he had a search warrant for the premises based on the belief that there was counterfeit money located there. The officers then proceeded to search the premises. During the search, Policewoman Mary Knoblock found an A & P shopping bag filled with counterfeit ten and twenty dollar bills in the possession of the defendant's mother. The bag and bills were turned over to Sergeant Hunter and he proceeded to take Mr. and Mrs. Mullens down to police headquarters for questioning. Shortly thereafter, the defendant Mullens, upon learning of his parents'

Decision and Order.

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detention, arrived at police headquarters, escorted by his cousin who was a police cadet, and was taken into custody. Sergeant Hunter orally informed him of his constitutional rights by reading from a card. This card was then signed by the defendant. The defendant was promised by Secret Service Agent Zona that his parents would not be arrested if he would cooperate with the police. After talking with Sergeant Hunter, the defendant led the Sergeant and Secret Service Agents Zona and Hume to 25 Wakefield Street in Buffalo, where the defendant turned over to the police aluminum plates used for the production of currency. They then proceeded to 1361 Fillmore Avenue in Buffalo where they found a completely operational Davidson offset press and other paraphernalia used in the printing of currency. Prior to leaving the premises, the police photographed the complete printing operation. They then returned to police headquarters.

Back at police headquarters, the defendant was readvised of his constitutional rights by Agent Zona and he executed a waiver of rights form. The defendant then

Decision and Order.

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gave a recorded statement of his involvement in the counterfeiting scheme in response to questions by Agents Zona and Burns.

The defendant in this case seeks to have the counterfeit ten and twenty dollar bills which were seized at 1536 Jefferson Avenue, the oral statements made by him to the police while he was in custody, and the printing press, aluminum plates and other paraphernalia seized at 25 Wakefield and 1361 Fillmore Avenue suppressed. In view of the defendant's argument here that all evidence obtained after the search of 1536 Jefferson Avenue was the fruit of an illegal search and seizure, the legality of the search at 1536 Jefferson Avenue is of primary importance. The defendant argues that no probable cause existed for the issuance of the search warrant here because sufficient underlying circumstances were not set forth in the affidavit in order for the City Court Judge to make a finding of probable cause. The government argues that probable cause does exist in this case, since the affidavit sets forth personal observations of the informant from which he gained

Decision and Order.

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his information. This court is in agreement with the defendant that probable cause for the issuance of the search warrant in this case was not established.

The relevant portion of the affidavit does not set forth a sufficient basis for a finding of probable cause. Under the Supreme Court decisions of Aguilar v. Texas, 378 U.S. 108 (1964), and Spinelli v. United States, 393 U.S. 410 (1968), the standard by which probable cause is determined is twofold. First, the informant must be reliable and the affidavit must set forth reasons why this is so. Second, the affidavit must set forth the underlying circumstances upon which the informant based his conclusions.

As to the reliability of the informant, there is no problem. The affidavit points out that the informant was known to the officer for several years, had given information leading to arrests and convictions, and had given information leading to the arrest and conviction of a Ronald Kohlman. This is enough for the Magistrate to find that the informant is reliable.

Decision and Order.

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As to adequacy of the facts set forth upon which the informant based his conclusion, the affidavit is insufficient. Under Aguilar, the affidavit must give information as to the factual basis of the informant's conclusion. In the present affidavit, all that is stated is that "Berry Mullens . . . has several hundred ten dollar bills counterfeit . . ." The only fact upon which this statement could possibly be based is ". . . that on December 5, 1973 informant did see a suit case [sic] with the said bills in it at the above address and in the possession of Barry Mullens." The question arises how did the informant know that the bills were counterfeit? Upon what was that statement based? There is nothing in the affidavit to support this and, at the suppression hearing, Sergeant Hunter testified that the informant had not given him any information in the past that indicated the informant could tell counterfeit money. (Tr. at 37.) Thus, the affidavit does not set forth a sufficient basis in fact for the informant's statement that the money was counterfeit, and so the warrant must fail. The City Court Judge had

Decision and Order.

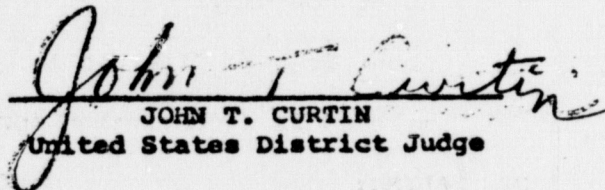
-3-

no basis for exercising the required independent judgment on the question of whether the informant's conclusion was more than surmise or repetition of rumor. See also United States v. Harris, 403 U.S. 573 (1971); United States v. McNally, 473 F.2d 934 (3d Cir. 1973), and DeAngelo v. Yeager, 490 F.2d 1012 (3d Cir. 1973).

For the foregoing reasons, this court concludes that the search and seizure of the premises at 1536 Jefferson Avenue were conducted in violation of the defendant's fourth amendment rights and the fruits of that search are, therefore, suppressed. At this time the court will defer ruling on the suppression of the oral statements made by the defendant while he was in custody and the evidence obtained in the searches of 25 Wakefield and 1361 Fillmore Avenue until after counsel have had an opportunity to brief the questions presented in the light of this order to suppress.

Briefs shall be filed on the questions remaining not later than November 4, 1974.

So ordered.


JOHN T. CURTIN
United States District Judge

DATED: October 4, 1974

Excerpts of Transcript of Proceedings of May 14, 1974.
J. E. Hunter, for Government, Direct.

8

1 BY MR. WILLIAMS:

2 Q All right. What information was provided?

3 A That Berry Mullens had, in his possession, a suitcase
4 with several thousand dollars of counterfeit money that
5 he was going to pass.

6 Q All right. Did you have any information as to where he
7 was seen with that suitcase?

8 A Yes, at 1536 Jefferson Avenue.

9 Q Now, Detective Hunter, how long has this individual been
10 an informant of yours?

11 A About seven years.

12 Q All right, and did this informant provide you with any
13 information in the past?

14 A Yes, on several occasions.

15 Q All right. Did any information so provided you by this
16 informant lead to anyone's arrest?

17 A Yes, about between four or five people; one for bank
18 robbery.

19 Q Well, did any of the information provided by this
20 informant lead to anyone's conviction?

21 A Yes.

22 Q About how many?

23 A About four to five people. The one stands out most in
24 my mind is a conviction for - -

25 MR. LALIME: I object to this line of

J. E. Hunter, for Government, Direct.

11

- 1 A Yes.
- 2 Q And do you recall what that date was and what time that
- 3 was, approximately?
- 4 A It was a Friday morning. I think it was between 10:30
- 5 and 11:00 o'clock in the morning.
- 6 Q All right. Do you recall the particular date?
- 7 A December the 7th.
- 8 Q All right, and when you went there, were you accompanied
- 9 by other people?
- 10 A Yes. There were two police women from the Buffalo
- 11 Police Department. There were two secret service agents.
- 12 I had two men from Frauds Buffalo Police Department, and
- 13 I had two of my men from Homicide.
- 14 Q All right, and first of all, Detective Hunter, can you
- 15 describe the premises for us?
- 16 A 1536 Jefferson Avenue is a two-story frame, wood frame
- 17 building, the first floor being a shop that was in the
- 18 process of being converted into a tailor shop. The
- 19 upstairs is the living quarters of Mr. and Mrs. James
- 20 Mullens and family.
- 21 Q And, by the way, did you know James Mullens?
- 22 A Yes, sir, I do.
- 23 Q How long have you know him?
- 24 A Better than twenty years.
- 25 Q All right. Now, when you went there, tell us what, if

1 This cadet didn't have a vehicle of his own, so I gave
2 him one of our unmarked police vehicles and he went and
3 picked up Berry and returned him to headquarters.

4 Q All right, and did you see Greene Berry Mullens there at
5 headquarters?

6 A Yes, I did.

7 Q And about what time was that?

8 A It was sometime in the earlier part of the afternoon.
9 I don't remember right off. I would say 1:00 or 2:00
10 o'clock, somewhere in there.

11 Q Did you have any conversation with Greene Berry Mullens
12 at that time?

13 A Yes, sir, I did.

14 Q All right. Can you tell us what, if anything, you said
15 and what, if anything, he said?

16 A Well, when Berry, - when I first started talking to
17 Berry, he started telling me that his mother and father
18 didn't know anything about it. I told him "Wait a minute,
19 Berry, I want to advise you of your constitutional
20 rights". He told me he knew about that and whatnot and
21 I says "Well, whether you know about it or not, I want
22 to advise you of your rights and then we can get into
23 what you want to talk to me about."

24 Q All right. Do you recall what, if anything, you said
25 to him at that point?

J. E. Hunter, for Government, Direct.

19

1 A I read him his rights of the Rights Card that is issued
2 to us by the Department and I had him sign the card
3 after I read him his rights off it.

4 Q All right. Let me show you Government Exhibit 3, marked
5 for identification, and I ask you, Detective Hunter, whether
6 you recognize that?

7 A Yes. This is the card that Berry Mullens signed and the
8 date 12-7-73 and the time 2:10 p.m.

9 Q All right. Did you read from that card?

10 A Yes, sir, I did.

11 Q Okay. Tell us whether or not you paraphrased or you
12 read verbatim?

13 A I read it verbatim.

14 Q And what does that card say? Can you read that card for
15 us?

16 THE COURT: You do not have to read that,
17 Mr. Williams. I can read.

18 BY MR. WILLIAMS:

19 Q All right. There appears to be a signature on there,
20 Detective. Whose signature is that?

21 A That is Mr. Greene B. Mullens' signature on the front
22 side.

23 Q All right. After you read that to him, what, if anything,
24 did he say to you?

25 A Well, after that, we had quite an extensive conversation

J. E. Hunter, for Government, Direct.

20

and a rather lengthy conversation with Berry.

Q First of all, did Mr. Mullens ever give you any indication that he understood what you had read to him?

A Oh, yes. Well, he gave me an indication that he knew what I was going to read to him before I even read it, but because of my experience, I read it anyway so there would not be any doubt in anyone's mind whether or not he had his rights read to him.

Q Did he make some statements to you?

A Yes, sir, he did.

Q Did you record what he said in any fashion?

A No, sir.

Q Mechanically?

A No, sir, not to my knowledge.

Q Did you take any notes?

A Yes.

Q What did those notes consist of?

A Well, the notes basically was things that he was saying. It wasn't extensive. They weren't even notes per se because Berry, after I read him his rights, readily admitted that the money was his, the whole operation was his.

Q When you say the money --

A The money that we found at 1536 Jefferson. He said it was his, his mother and father didn't know anything

J. E. Hunter, for Government, Direct.

21

1 about it, they didn't have anything to do with it; that
2 the operation was his and the whole thing. Subsequently,
3 we, with his information, with him taking us to various
4 places, he turned over the - -

5 Q Wait, let's back up a minute. You talked to him at
6 police headquarters?

7 A Yes.

8 Q Did you ever threaten him in any way?

9 A No, sir.

10 Q Did you ever make any promises to him?

11 A No, sir.

12 Q Did there come a time when you left Buffalo Police
13 Headquarters?

14 A Yes.

15 Q And where did you go when you left?

16 A When we left, we went on Wakefield.

17 Q Well, when you say "we", who is "we"?

18 A There was Berry Mullens, Sam Zona, Teddy Hume and myself.

19 Q How did it come about that the defendant Greene Berry
20 Mullens went with you?

21 A It was his suggestion and his cooperation to take us.

22 Q Well, when you said it was his suggestion, what, if
23 anything, did he say to you?

24 A Well, after having talked to him and whatnot, he agreed
25 to give us the plates and to take us to where the

J. E. Hunter, for Government, Direct.

1 printing press was.

2 Q All right. Then you said you went to Wakefield?

3 A Yes.

4 Q Do you remember the address on Wakefield?

5 A No, sir, I don't.

6 Q All right. What, if anything, did you do when you got
7 to Wakefield?

8 A When I got to Wakefield, Berry and I got out and we went
9 into a driveway and we entered a two-story, - two-family
10 building by the side door. We went upstairs and we
11 were met by some lady there that Berry knew who he spoke
12 to and introduced me. Berry then proceeded to go in
13 a hallway and to a bedroom and he returned with some
14 newspapers in his hand and we left and returned to the
15 secret service car. He gave me the newspaper that he
16 had in his hand on the way downstairs. When we got in
17 the secret service car and I opened the newspaper bag,
18 it was the plates that were used to print the - -

19 Q Well, I think that should be stricken from the record.
20 Did the defendant make any comments to you about what
21 was contained in the newspaper?

22 A Yes. He told me it was the plates.

23 Q That's what he told you?

24 A Yes.

25 Q All right. What, if anything, did you do at that point?

J. E. Hunter, for Government, Direct.

23

1 A After - -

2 Q After you left Wakefield?

3 A Oh, then Mr. Mullens instructed us to go, - to get back
4 on Fillmore. We went south on Fillmore from Wakefield
5 and from Fillmore and Utica he instructed us to turn
6 into a driveway on Fillmore Avenue. We pulled into the
7 driveway. It's on the east side of Fillmore, south of
8 Utica, but north of French Street and it appeared to be
9 a vacant house. I knew the house. I used to know some
10 people that lived there, but the house was vacant.

11 Q All right. Can you recall the address?

12 A No, I can't, not right offhand, no.

13 MR. LALIME: Your Honor, may we approach the
14 bench for one minute?

15 THE COURT: There is no jury.

16 MR. LALIME: I am sorry.

17 (Off the record discussion
18 had at the bench between Court and
19 counsel.)

20 THE COURT: All right. Now, we are at the
21 Fillmore Avenue vacant house near
22 Utica Street.

23 BY MR. WILLIAMS:

24 Q Detective, do you recall the address on Fillmore Avenue?

25 A No, I don't.

J. E. Hunter, for Government, Direct.

24

1 Q All right. Do you have a description of that premises?

2 A Yes.

3 Q And can you tell us what that is?

4 A This also was a wooden frame clapboard premises. In the
5 front lower, there used to be a store. In the rear,
6 entering the rear door, there is a downstairs flat and
7 there is - -

8 Q Was that occupied at that time?

9 A No, neither. In fact, it was all torn up on the inside
10 upstairs and down, but there were living quarters in the
11 rear behind what had been the store, and then there was
12 a full flat on the second floor.

13 Q And was that occupied?

14 A No.

15 Q All right. Well, how did you come to go to the premises
16 on Fillmore Avenue?

17 A By following Mr. Mullens' directions.

18 Q Well, did he say anything about the premises on Fillmore
19 Avenue?

20 A He told us that is where the press was.

21 Q All right, and did there come a time when you went in
22 there?

23 A Yes.

24 Q Did anyone else go in with you?

25 A Yes. After we, - after we got in, - that is Mr. Mullens,

J. E. Hunter, for Government, Direct.

25

1 Sam, Teddy and myself, then a couple men from my squad
2 came in.

3 Q What portion of the premises did you go into?

4 A We went, - well, we immediately went to the second
5 floor.

6 Q Who made the decision to go to the second floor?

7 A We were following Mr. Mullens.

8 Q Okay.

9 A And in what, at one time, I imagine was the dining room
10 area, the press was set up. Mr. Mullens told us that
11 he had burned some money in the basement and in the
12 rear of the house outside. We then went to the base-
13 ment and took photographs of what appeared to be
14 burned residue and we also took pictures of the garbage
15 can.

16 Q Where was the garbage can?

17 A This was outside, just as you go into the door, the
18 rear door, to enter the premises.

19 Q Let me show you Government Exhibits 5 and 6 for identi-
20 fication and ask you, Detective, whether you recognize
21 those?

22 A Yes. Number 5 is the garbage can where it was sitting
23 outside in the rear of the house, and it shows the
24 burning. This was a new garbage can. It shows the
25 burned remains of tremendous heat. The first picture

J. E. Hunter, for Government, Direct.

26

1 also has a sheet of three uncut bills. Number 6 is the
2 garbage can. I turned it over and took a picture of
3 that and the inside and it shows in the bottom one or
4 more sheets of uncut, - it appears to be \$20 bills.

5 Q Okay. Now, Detective, prior to the time that you left
6 headquarters that day to go to Wakefield and to go to
7 Fillmore, did you have any conversation with the defendant
8 Greene Berry Mullens about the Fillmore Avenue address?

9 A Yes.

10 Q All right, and can you tell us what, if anything, you
11 said and what, if anything, he said about that?

12 A Well, Mr. Mullens told us that he knew where the plates
13 were. It was his press and he knew where the press
14 was; that it was his operation all by himself. He
15 wasn't going to burn anybody else. He was going to take
16 the whole weight himself and in response to a question
17 by Sam Zona, as far as his ability to run the press, he
18 told us he knew how to run it and he could run it by
19 himself and that he wasn't going to burn anyone else; he
20 was going to take the whole weight himself. Part of
21 the conversation was due to the fact that we felt there
22 might be other people in on this operation and et cetera.
23 He said that there was not, that it was his by himself,
24 and we discussed how much money had hit the streets
25 because that Thursday I believe the first money appeared

J. E. Hunter, for Government, Direct.

1 in the Buffalo area from a couple of the utility companies.
2 Mr. Mullens told us that there was three, four, five
3 hundred dollars out. He said he could get the most of it
4 back if he were to be turned loose, he could get it back,
5 but - -

6 Q All right. Was there any conversation about searching
7 the Fillmore Street address?

8 A Well, at that time, we didn't know where the press was.
9 The only time we knew where the press was, is following
10 Mr. Mullens' directions on which way to go after we left
11 Wakefield.

12 THE COURT: When you went to Fillmore Avenue,
13 Mr. Hunter, was there any locked
14 doors or anything?

15 THE WITNESS: Yes, sir.

16 THE COURT: Did he have a key?

17 THE WITNESS: Yes, sir.

18 THE COURT: He did?

19 THE WITNESS: Yes, sir, and in fact, he took
20 the key out and opened the lock
21 himself.

22 THE COURT: In Fillmore Avenue you say
23 no one was occupying the premises?

24 THE WITNESS: No, sir. The place was a
25 regular shambles on the inside.

J. E. Hunter, for Government, Direct.

28

1 THE COURT: It was apparent when you looked
2 in that no one could live in there
3 because it was a shambles?

4 THE WITNESS: No one could live there, sir.

5 THE COURT: When you went to the second
6 floor, how did you get from the
7 ground up to the second floor?

8 THE WITNESS: Once you go into the door, the
9 outside door - -

10 THE COURT: The door on the side?

11 THE WITNESS: Yes, on the back. You just
12 have to about close the door and
13 step behind the door and there is a
14 stairway leading straight up.

15 THE COURT: He had a key to that outside
16 door?

17 THE WITNESS: Yes, sir, it was a new hasp and
18 a new lock on it and Berry took the
19 key out of his pocket and opened
20 the door.

21 THE COURT: Go ahead, Mr. Williams.

22 BY MR. WILLIAMS:

23 Q All right. With respect to that Fillmore address, did
24 you ever ask Mr. Mullens whether he would consent to your
25

J. E. Hunter, for Government, Direct.

1 searching that premises?

2 A Yes, and he even gave us a receipt, a rent receipt that
3 he had in his possession to prove that he was renting
4 these premises.

5 Q Did you ever ask him whether or not he would consent
6 to having you search that premises?

7 A Yes. I believe I even had him sign a consent for search
8 form.

9 Q Let me show you Government Exhibit 4 for identification
10 and ask you whether or not that is that form?

11 A Yes, sir, it is.

12 Q All right, and what, if anything, did you tell him
13 about that?

14 A I explained to him that this was giving us permission
15 to search without having to go to get a search warrant.

16 THE COURT: This is what exhibit, 7?

17 MR. WILLIAMS: This is 4, your Honor.

18 THE COURT: Four.

19 BY MR. WILLIAMS:

20 Q Did you say anything else to him with respect to that
21 Exhibit 4?

22 A No. There he told me again that he knew what it was
23 that he was signing. He is very knowledgeable about the
24 law. He is not no dummy.

25 Q And, by the way, what address appears on Exhibit 4?

J. E. Hunter, for Government, Direct.

30

1 A 1361 Fillmore Avenue.

2 Q Did there come a time when you placed the defendant
3 Greene Berry Mullens under arrest?

4 A No, sir.

5 Q You didn't?

6 A No, sir.

7 Q Up to this point, - that is the time you are at 1361
8 Fillmore Avenue was he under arrest?

9 A Well, he wasn't under arrest per se. I would say that
10 he was in custody pending the outcome of the investiga-
11 tion.

12 THE COURT: Did you take any written or
13 typewritten statement from him?

14 THE WITNESS: No, sir, I did not.

15 BY MR. WILLIAMS:

16 Q Did he ever ask you permission to leave at any time?

17 A Mr. Mullens did ask me if I would do whatever I could
18 to help him. You know, return to the streets as far
19 as bail or anything of that, but he never asked me.

20 Q You had him down at headquarters and you had him in the
21 vehicle, is that correct?

22 A Yes, sir.

23 Q All right. Did he ever ask you if he could leave at
24 any time?

25 A No.

J. E. Hunter, for Governme. , Direct.

1 Q So there is no question, Detective Hunter, with respect
2 to Government Exhibit Number 1 marked for identification,
3 do you know whether or not the affidavit attached as
4 part of that exhibit was filed in City Court?

5 A Was it filed?

6 Q Yes.

7 A Do you mean by that, Counselor, was it returned?

8 THE COURT: Was a return made?

9 THE WITNESS: Not the affidavit, your Honor.

10 This was an error on my part. I
11 did return the original search
12 warrant, though.

13 BY MR. WILLIAMS:

14 Q All right, and with the original search warrant, did
15 you make a return?

16 A Yes, I did.

17 Q And does that appear?

18 A Yes, on the back of it I filled in the inventory of
19 property taken the 7th day of December from 1563
20 Jefferson Avenue.

21 MR. WILLIAMS: I have no more questions.

22 THE COURT: We do not have the copy of
23 the inventory.

24 MR. WILLIAMS: Isn't that on the copy? I am
25 sorry.

1 THE COURT: No. So at the end, will you
2 make a copy - -
3 MR. WILLIAMS: I will make photocopies.
4 THE COURT: For myself and Mr. Lalime.
5 MR. WILLIAMS: Yes, sir, I will.
6 THE WITNESS: Your Honor, I have a copy.
7 THE COURT: He can make a copy.
8 THE WITNESS: They are already made.
9 THE COURT: Mr. Hunter says he has some
10 already made, Mr. Williams, and that
11 might save you some time.
12 MR. WILLIAMS: All right, very good.
13 THE COURT: Mr. Lalime.
14
15 CROSS EXAMINATION BY MR. LALIME:
16 Q Thank you, your Honor. Good morning, Sergeant.
17 A Good morning, sir.
18 Q Sergeant, in your affidavit for the search warrant, it
19 says that you based your information on a reliable
20 informant that has given information in the past, is
21 that right?
22 A That's correct.
23 Q And this information was received according to your
24 testimony on December 6th, is that right?
25 A Yes, sir.

J. E. Hunter, for Government, Cross.

33

- 1 Q And what time of the day or night was that, sir?
- 2 A This was, - it was around 8:00 or 9:00 o'clock. I know
- 3 it was dark.
- 4 Q That would be in the p.m. then?
- 5 A Yes, sir.
- 6 Q And what did you do after you received the information
- 7 from this informant? Did you go home that night?
- 8 A Yes, sir, I did.
- 9 Q And what time did you discontinue your day of work on
- 10 that particular night?
- 11 A Well, on that particular day, I think I had finished
- 12 work, - I think I was working the day trick and I would
- 13 have been finished at 4:00 o'clock.
- 14 Q But you went to talk to this informant around 8:00 or
- 15 9:00 o'clock, is that right?
- 16 A Yes.
- 17 Q And did you talk to this informant on the phone or
- 18 personally?
- 19 A In person.
- 20 Q And this informant basically told you that they saw
- 21 Greene Berry Mullen with a suitcase of counterfeit money,
- 22 is that right?
- 23 A That's correct.
- 24 Q And did they tell you where they saw this he or she, did
- 25 they tell you where they saw the counterfeit money?

J. E. Hunter, for Government, Cross.

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- 1 A Yes.
- 2 Q And where did they tell you they saw it?
- 3 A It was a day or so prior to the date that I was talking
4 to him.
- 5 Q That would be on the 3rd or 4th, 5th of December?
- 6 A Somewhere in there, yes.
- 7 Q Did you take notes on the information?
- 8 A No, sir.
- 9 Q So we don't know what day he or she actually saw this
10 bag of money in the apartment, is that right?
- 11 A That's right.
- 12 Q And this informant said they saw the money in the apart-
3 ment, is that right?
- A Yes.
- Q Did they give you any specifics as far as the room was
concerned?
- A They said it was in the front room.
- Q That is in, - that would be the living room area, - they
said the front room?
- A At 1536 Jefferson, there are two front rooms.
- Q Front room meaning - -
- A There is a front room, sitting room and then there is a
front room right along next to it that is a bedroom.
- Q And where did the informant tell you that the - -
- A In the front room.

1 Q The front room, not meaning the front bedroom or the
2 front living room?

3 A Well, actually, the front room architecturally could
4 have been one, because the bedroom that was being, -
5 that has been converted, in my opinion, to a bedroom,
6 is part of the front room, due to the fact that there is
7 a very large arch across between the two rooms. In other
8 words, you don't have a wall with a door for privacy.
9 If anyone was in bed in that particular front bedroom
10 and there was people sitting in the seating area of that,
11 you could look right into the room.

12 Q Did this informant describe to you the front room?

13 A No, sir.

14 Q And all he or she said was that it was in the front
15 room, is that right?

16 A Yes.

17 Q And then after you got this information, did you record
18 it in some fashion?

19 A No.

20 Q No report made?

21 A No, sir.

22 Q And did you conduct an investigation based on that
23 information that night?

24 A No, sir.

25 Q Did you conduct an investigation - -

J. E. Hunter, for Government, Cross.

1 A Yes, sir, just a minute. The only investigation I did
2 that night, I drove by the premises so that I would be
3 able to adequately describe them in my application for
4 a search warrant.

5 Q And did you inquire at the secret service that night
6 whether Greene Berry Mullens was, in fact, passing
7 counterfeit money?

8 A No, sir, I did not.

9 Q Or, in fact, they were conducting an investigation on
10 Greene Berry Mullens regarding counterfeit money?

11 A No, sir, I did not.

12 Q Did you know the background of Greene Berry Mullens as far
13 as arrest record was concerned?

14 A No.

15 Q You didn't know that at all. Did you check that the next
16 day before you got the arrest warrant?

17 A Yes.

18 Q And did you find anything there on any part of Greene
19 Berry's life that he passed, uttered, forged counterfeit
20 money?

21 A No, sir, I did not.

22 Q And you went to Judge Sam Greene and got this warrant
23 based on the information that is here in this affidavit?

24 A That's correct.

25 Q The informant gave you information that was reliable in

J. E. Hunter, for Government, Cross.

1 the past; the last time it led to a conviction or arrest
2 was November of 1971 before Judge Curtin, is that right?

3 A If I stated that that was the last time, it doesn't
4 necessarily mean that this was the last time I merely
5 used that particular incident because it was one that
6 the information that led to the arrest and conviction of
7 Mr. Coleman was given to me exclusively by this indivi-
8 dual. There have been other cases that there have been
9 convictions that I could not just say that it was wholly
10 and solely this person's information due to the fact
11 that it was concerning homicides and as you know, the
12 whole squad works on them. Whether I come up with the
13 key solution, I could not say that this informant's
14 information alone led to the conviction.

15 Q Okay. Did the - -

16 THE COURT: Mr. Lalime.

17 BY MR. LALIME:

18 Q Now, in talking to your informant, the individual
19 said that there was a suitcase filled with counterfeit
20 money?

21 A Yes, sir.

22 Q Has this informant given you any information in the
23 past that indicated that he or she could tell counter-
24 feit money?

25 A No, sir.

1 Q Did he or she tell you, describe the suitcase to you?

2 A Yes.

3 Q And did you put that down on paper?

4 A No, sir.

5 Q And did you put that in your affidavit for your search
6 warrant?

7 A No, sir.

8 Q And I asked you whether or not, - once before whether
9 or not she described, or he described the premises to
10 you and did you put that down on paper and you said
11 "no", is that right?

12 A That's correct.

13 Q This individual also said based on information in your
14 search warrant because you haven't done any person
15 investigation, is that right, on this; - you didn't
16 do any personal investigation before you got this search
17 warrant, did you, other than going by the house?

18 A Right.

19 Q And you had reason to believe that not only counterfeit
20 \$10 bills were there and/or plates for printing the
21 same and other material used for counterfeiting, - what
22 is that based on?

23 A That is based on the fact that in trying to get a search
24 warrant to be proper, I didn't want to limit myself to
25 finding a roll or a bundle of \$10 bills and then have to

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walk out and leave the press and the plates if they were there.

Q But you didn't have, of your own personal knowledge, or any knowledge from an informant that there was plates there, is that right?

A No, sir.

Q Did this informant give you information as to the denomination of the bills?

A Yes, sir.

Q Did you put this down on paper?

A No, sir.

Q And it is my understanding that on direct examination you said there was tens and twenties found, is that right?

A That's correct.

Q In fact, in one of the Government exhibits you said there was a \$20 bill, it looked like a \$20 bill, is that right, Government Exhibit Number 6?

A I believe so, if that is the garbage can.

Q Number 5, I am sorry, and that was a \$20 bill?

A There is three \$20 bills.

Q Your informant said nothing about \$20 bills?

A Yes, sir, he did.

Q That doesn't appear on the information on the affidavit for the search warrant. Is that a mistake on your part?

- 1 A I believe I said tens and twenties. I don't know. I
2 was more concerned in the counterfeit money regardless of
3 the denominations, you know.
- 4 Q What time of day did you get the search warrant from
5 Samuel Greene?
- 6 A Very early in the morning.
- 7 Q About what time would be early?
- 8 A I would say between 9:00 and 9:45 a.m.
- 9 Q And when you got this search warrant, was there a court
10 reporter present?
- 11 A She may have been present. I got the search warrant.
12 Judge Greene signed the search warrant in his chamber.
- 13 Q And was there anybody else present besides yourself and
14 Judge Greene?
- 15 A There may have been.
- 16 Q Was there?
- 17 A If there had been, - there may have been his stenographer.
18 They usually are in the offices with the judges.
- 19 Q Do you recall anybody taking notes?
- 20 A No. No one took any notes.
- 21 Q Did you affirm what you said in front of Judge Greene?
22 Did you raise your hand and affirm the facts?
- 23 A Yes, sir, I did.
- 24 Q But it was not recorded?
- 25 A No, sir, it was not.

1 Q Did you have this affidavit for the search warrant
2 prepared before you went to Judge Greene's chambers?

3 A Yes, sir, and then I added some to it.

4 Q Typing wise? I don't see any handwriting.

5 A No, typing wise.

6 Q Now, when you got to the house at 1536 Jefferson Avenue,
7 there were seven or eight police officers with you or
8 law enforcement officers?

9 A Yes, sir.

10 Q Just to go back one second now, after you got all this
11 information from your informant and after you got the
12 search warrant, did you then call the secret service?

13 A I called the secret service about as soon as I got to
14 the office that morning. They came over. I explained
15 to them what I had and et cetera. After I got the
16 search warrant and whatnot, Sam Zona and Teddy Hume
17 came over to the office, if they weren't already there.
18 There was some going back and forth. This is when Sam
19 told me that there had been some new counterfeit money
20 that had hit the street just the day before. That was
21 the first that they had knowledge of this particular
22 money. After I got the search warrant, we went into my
23 office and I drew a diagram of Jefferson and Brunswick
24 and where the house was located and Alexander, the rear
25 street, because in taking the number of police personnel,

I had the house covered front and back in the possibility that someone would try to escape.

Q You didn't tell anybody in the secret service that your informant had indicated they had seen a suitcase in the possession of Greene Berry Mullens, did you, or did you?

A I may have.

Q Did you tell them where they had seen the suitcase?

A Yes. If I told them about the suitcase, I told them where.

Q But you have made no recordings of this, have you?

A No, sir.

Q You searched the premises. Did you find a suitcase?

A Yes, sir.

Q Did you find it full with money?

A We didn't find anything in it.

Q Okay. How many suitcases did you find?

A I don't remember seeing just the one.

Q Just the one.

A Yes.

Q There was no money in it?

THE COURT: You did not find any money in the suitcase?

THE WITNESS: No, sir.

THE COURT: Was there any in the front room area?

1 THE WITNESS: Yes, sir.

2 BY MR. LALIME:

3 Q Well, basically, in what front room, the living front
4 room or the - -

5 A The living - -

6 Q Or the lying front room?

7 A I believe it was the living front room.

8 Q Whereabouts in the living front room, Detective Hunter?

9 A I really can't recall because I didn't search the premises
10 completely by myself.

11 Q You didn't find this then yourself?

12 A No, but it was shown to me, so where it was actually
13 sitting before it was picked up, I don't know.

14 Q This was the one the informant described to you, is that
15 right?

16 A I don't know.

17 Q Well, did they describe one similar to this color-wise
18 or size-wise?

19 A They described a suitcase that was blue.

20 Q And you found a blue suitcase?

21 A It was a blue suitcase.

22 Q Did you bring this blue suitcase down for evidence?

23 A No, sir.

24 Q Did you show this to your informant to see whether or
25 not it was the blue suitcase?

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A No, sir.

Q Now, Sergeant Hunter, did there come a time, - there came a time, - your investigation on this was based on what section of the Penal Law?

A I have no idea.

Q Did you know that there was a section of the Penal Law for uttering forged or counterfeit money?

A Oh, yes.

Q But you weren't basing your investigation on this; you based it on the United States Government Counterfeit Money Section, is that right, of Title 18?

A No, sir. Counselor, I based it on the fact that I knew it was unlawful to print money. As far as the section of the Penal Law, State or Federal, I didn't go into that.

Q But you did call in the secret service?

A Yes, sir, I did.

Q Do you call in the secret service on homicide investigations?

A No, sir.

Q Or on car thefts?

A No, sir.

THE COURT:

Mr. Lalime, I do not see where this is getting us. I think it is certainly well-known to just about

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everyone nowadays the secret service investigates counterfeit money cases.

MR. LALIME:

This is my understanding, your Honor, and this is what I am trying to bring out to the Court. Part of my allegation is that by going to the City Court for the search warrant, which has apparent defects in it and the service and so forth, they were trying to circumvent the Federal Court, the Magistrate's - -

THE COURT:

I do not see how that has anything to do with it at all. It either stands or falls on its own merit. Whether it is authorized by a City Court Judge or a Magistrate, if it is bad it does not make any difference whether the Magistrate authorizes it or whether a City Court Judge authorizes it. If it is good, it still does not make any difference.

BY MR. LALIME:

Q Detective Hunter, you made a return on the search warrant, is that right?

A Yes, sir, I did.

Q But you didn't make a return on the affidavit?

A No, sir.

Q Have you served search warrants before?

THE COURT: I do not think it would be the return of the affidavit. Usually, the affidavit - -

MR. LALIME: It is with the return, your Honor.

THE COURT: Is kept with the warrant and eventually filed. I do not know what the practice is in the City Court of Buffalo, but in our district here, it is filed eventually with the clerk along with the warrant and the return.

MR. LALIME: That is exactly the procedure under 690 of the CPLR, your Honor.

THE COURT: You did not file the search warrant?

MR. LALIME: He said he did not.

THE WITNESS: I filed the search warrant. I didn't return the affidavit with it. That was an oversight on my part.

BY MR. LALIME:

Q Did you leave an inventory at 1536 Jefferson of the material taken?

A No, sir, I did not.

Q In fact, just another typographical error, I assume, on the return of the search warrant. It says 1563 Jefferson Avenue. You actually meant 1536?

A It could have been 1563 or 1536. I really don't recall the exact address at this particular time, but it was the premises controlled by Mr. Mullens.

Q Mr. James Mullens.

A And his family, yes, James Mullens.

Q Did you verify the fact that Berry Mullens lived at 1536 before you - -

A Yes. We found some, - we found some type of mail there.

Q I mean before.

A No, sir, not before.

Q When you went down to Judge Greene's office?

A No, sir.

Q So in fact, you didn't know whether Berry Mullens lived there or not, did you?

A I knew he lived there, but I didn't verify it with a utility bill made out to him or anything of that nature.

Q Do you know who owns that house at 1536?

A Yes, sir. Well, I know Jimmy is paying for it, or if he

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1 isn't, he has been living there long enough just about
2 to be the owner of it if he isn't.

3 THE COURT: We are going back to before the
4 search warrant was granted by Judge
5 Greene.

6 THE WITNESS: Yes, sir.

7 THE COURT: Before, - In other words, the
8 affidavit and the warrant you had
9 been acquainted with James Mullens
10 for some time and you knew he had
11 lived there for some time?

12 THE WITNESS: Yes, sir.

13 THE COURT: What was your knowledge of
14 Berry Mullens' connection with this
15 premises?

16 THE WITNESS: I knew that he was Jimmy's
17 son.

18 THE COURT: . What about where he was living?

19 THE WITNESS: I had reason to believe that he
20 was living there because he was open-
21 ing up a tailor shop underneath
22 there. This I knew prior to.

23 BY MR. LALIME:

24 Q Does this say this in your affidavit for your search
25 warrant?

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A No, sir.

Q So based on the affidavit of search warrant, an informant gave you information that Greene Berry Mullens had a suitcase full of counterfeit money at 1536 Jefferson Avenue in his possession, but anything further than that, you did nothing, is that right? You did nothing to verify that Greene Berry Mullens lived there other than your own assumptions and you didn't put it in your affidavit, is that right?

A That's correct.

Q Now, you took the parents down to police headquarters, is that right, or you had them escorted down to police headquarters?

A Yes, sir.

Q Just retrace our steps one second to go back to the area of the house where you found the counterfeit money, what area of the house did you find the counterfeit money?

A I didn't find it.

Q Who found it?

A It wasn't found, actually. Mrs. Mullens went into the bedroom part of the front room and she took out a brown shopping, - not shopping bag, - a brown grocery bag, a grocery bag from the A&P and she took it into the dining room area and put it in a chair and she sat on it

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1 and one of the policewoman observed her doing this and
2 asked her what did she have in this bag. Mrs. Mullens
3 said that it was dirty garments of hers, that she would
4 have been embarrassed had the police looked through
5 them. The police lady in turn told her that she didn't
6 mind being embarrassed and she asked Mrs. Mullens to
7 unseat herself and she looked in the bag and she found
8 the uncut counterfeit money.

9 Q Was it actually, - I don't see uncut money here today.
10 Is it actually part of the evidence? You don't have it
11 marked as evidence.

12 THE COURT:

Eventually, I suppose it is
13 your idea to offer this, is that
14 right, Mr. Williams, or is it not?

15 MR. WILLIAMS:

Well, I wasn't going to have
16 the actual money here.

17 THE COURT:

If there is a trial.

18 MR. WILLIAMS:

Yes, sir.

19 THE COURT:

Is there a proposal to offer
20 this?

21 MR. WILLIAMS:

Yes, sir.

22 THE COURT:

I think it makes a lot more
23 sense to know exactly where we are,
24 that whatever you are going to offer
25 that you mark it so that it may have

1 some relevancy in questioning about
2 size, shape, bulk, all the rest of
3 it, about where certain things are
4 found. You ought to have it marked
5 and made available. You do not have
6 to put it in evidence here, but it
7 is available so counsel can use it
8 if he wants to.

9 MR. WILLIAMS:

I will have it brought over.

10 I have, of course, had it available
11 and I have offered it to Mr. Lalime
12 for inspection at any time, the money
13 and the plates, et cetera, et cetera.

14 THE COURT:

Go ahead.

15 BY MR. LALIME:

16 Q The bag of money, was it whole bills?

17 THE COURT:

Mr. Williams, we do not need it
18 now. You stay here.

19 BY MR. LALIME:

20 Q Did that bag of money, - was it in whole or in parts,
21 was it ripped or burned or what was the condition of
22 that bag of money?

23 A The bag itself?

24 Q No, the money inside of that.

25 A What was the condition of it?

1 Q Right.

2 A Well, it had just been jammed into the bag. There were, -
3 there was several - I would say there was several
4 hundred bills, sheets with two or more bills printed
5 that had not been cut to size. There were several bills
6 in the bag that had been cut to size. There were, -
7 there was a lot of trimming from bills that had been
8 already cut from paper, that had already been cut all
9 in this bag.

10 Q Now, there came a time that you had the Mullens, Mr. and
11 Mrs. James Mullens, Jimmy Mullens sent or brought down
12 to headquarters, is that right?

13 A That's right.

14 Q And they weren't under arrest at that time?

15 A They weren't technically under arrest. They were in
16 custody pending investigation.

17 Q Pending the investigation?

18 A The outcome of this investigation.

19 Q Of the Buffalo Police Department or the secret service?

20 A Well, I would have to say the Buffalo Police Department
21 because I was running the thing.

22 Q Did you advise them why they were coming downtown?

23 A Yes.

24 Q For investigation on the counterfeit money?

25 A Well, they were right there when we found it.

- 1 Q And you didn't place them under arrest?
- 2 A No.
- 3 Q Were they ever placed under arrest?
- 4 A No, sir.
- 5 Q Were they subsequently let go by the Buffalo Police
- 6 Department?
- 7 A Yes, sir.
- 8 Q And about what time of the day or night was that?
- 9 A I would say this was 3:00 o'clock in the afternoon.
- 10 Q After Greene Berry had come in?
- 11 A After Berry came in, yes.
- 12 Q Did there come a time when you talked to Greene Berry
- 13 Mullens that you told him that his parents were going
- 14 to suffer for things that he had done?
- 15 A No, sir.
- 16 Q Or words similar to that effect?
- 17 A No, sir.
- 18 Q Did you tell him that his parents would be arrested
- 19 if he didn't own up to owning these particular implements
- 20 for counterfeiting or the counterfeit bills you found?
- 21 A No, sir. As I stated on direct examination, when Berry
- 22 Mullens came into the office, he came in stating that,
- 23 you know, that Jimmy, - let my parents go, they didn't
- 24 know anything about it, they don't have anything to do
- 25 with this. I will take the weight, and that is when I

1 A. Well, arrangements had been set up previously for
2 arraignment and the paperwork was set up in our office
3 and Mr. Mullens was arraigned.

4 Q. Was Mr. Mullens placed under arrest?

5 A. He was placed under arrest in Mr. Hunter's office.

6 Q. Who placed him under arrest?

7 A. I did.

8 Q. And about what time was that?

9 A. That was around 2:00 o'clock or 2:15.

10 Q. All right. When you got back to this office, your
11 office here in this building, about what time was that?

12 A. It was around 5:00.

13 Q. All right. Did you have any conversation with Greene
14 Berry Mullens at that time?

15 A. After the arraignment he was brought down to our office
16 and readvised of his Constitutional rights by me.

17 Q. What did you advise him?

18 A. Well, I advised him orally and on a written form that he
19 had the right to remain silent; anything he would say
20 could be used against him in a court of law; that he had
21 a right to an attorney; he had a right to have an
22 attorney present at the time if he wanted to and if he
23 waived his right for an attorney, he could stop the
24 questioning at anytime for the purpose of obtaining an
25 attorney or for just to stop the questioning.

1 Q. All right. Did he say anything to you at that point?

2 A. He said he understood his rights. He said "Yes", he
3 would sign the form. At that time he said he would also
4 give a signed sworn statement.

5 Q. Let me show you Government Exhibit 9 for identification
6 and I ask you if you recognize that?

7 A. That is our standard form, waiver of rights and warning
8 of rights form. I signed that.

9 THE COURT: What exhibit is this, Mr. Williams?

10 BY MR. WILLIAMS:

11 Q. This is Exhibit 9. Now, is the name on there Greene B.
12 Mullens?

13 A. Yes.

14 Q. And that is your signature?

15 A. Yes, and that is Mr. Mullens' signature.

16 Q. Did you observe him sign that?

17 A. Yes, I did.

18 Q. Does your name appear there anywhere?

19 A. Yes, I signed there.

20 Q. Now, again with respect to Exhibit 9, did you read that
21 to him or did you give it to him to read or what did
22 you do?

23 A. I read it to him. He read it and another agent read it
24 to him on a tape recording.

25 Q. All right. Subsequent to that, Mr. Zona, did Mr. Mullens

S. J. Zona, for Government, Direct.

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1 say anything to you?

2 A. Subsequent?

3 Q. Yes.

4 A. Yes. He gave us a recorded statement as to his involve-
5 ment.

6 Q. When you say "He gave us", who is "us"?

7 A. The people present at the time in the room, at the time
8 of the recording were myself and Agent Burns. After
9 the witnessing, Agent Brehm left for another matter and
10 we were in a closed office and present were Mr. Mullens,
11 Agent Burns and myself.

12 Q. What is Agent Burns' first name?

13 A. Timothy.

14 Q. And a statement was given at that time?

15 A. Yes, it was.

16 THE COURT: Mr. Zona, you say a recorded, - this
17 was on a dictating machine of some kind?

18 THE WITNESS: It was on a Sony Recorder, sir.

19 BY MR. WILLIAMS:

20 Q. And who was asking the questions?

21 A. Both Agent Burns and myself.

22 Q. And were you transcribing it mechanically, were you?

23 A. Yes.

24 Q. All right. Did you cause a transcription to be made of
that interview?

1 A. Yes, I did.

2 Q. All right. Let me show you Government Exhibit 10 for
3 identification and I ask you to look at that, Mr. Zona,
4 and tell us whether or not that is the transcription?

5 A. Yes, it is.

6 Q. Now, Mr. Zona, with respect to Government Exhibit 10
7 for identification, can you tell us whether or not that
8 is a true and accurate transcription of the recording
9 that was taken on that date and time?

10 A. Yes, it is.

11 Q. Did you have occasion to compare this with the recording?

12 A. Yes, I have.

13 Q. When was the last time you did that?

14 A. About two weeks ago.

15 MR. WILLIAMS: All right. For the purpose of
16 this hearing, I wish to offer in evidence
17 Government Exhibit Number 10.

18 MR. LALIME: No objection, your Honor.

19 THE COURT: It is admitted. Exhibit 10 may be
20 marked in evidence for the purpose of the
21 hearing.

22

23 (Government Exhibit Number 10 received
24 in evidence.)
25

1 A. Not the facts leading up to the arrest. We discussed
2 the future of this particular note in the Buffalo area
3 since it was still appearing.

4 Q. Now, Mr. Zona, you were at the premises 1536 Jefferson,
5 is that correct?

6 A. Yes.

7 Q. And were you also at 1361 Fillmore?

8 A. Yes.

9 Q. And you were also at 25 Wakefield?

10 A. Yes.

11 Q. And certain things were seized, is that right?

12 A. Yes.

13 Q. Did you prepare any list or inventory of the things that
14 were seized?

15 A. Yes, I did.

16 Q. Let me show you Government Exhibit Number 16 for
17 identification and I ask if you can identify that?

18 A. Yes.

(Government Exhibits Numbered 15 and 16,
respectively, marked for identification.)

BY MR. WILLIAMS:

Q. Now, directing your attention to Page 1 of Exhibit 16
there appears to be five items set forth there, is that

- 1 correct?
- 2 A. Yes.
- 3 Q. And Number 1, where were those items found?
- 4 A. One, two, three and five were found at 1536 Jefferson.
- 5 Q. And what is one, two, three and five?
- 6 A. One, two and three is the counterfeit money itself.
- 7 Number five is the A&P shopping bag in which the money
- 8 was located.
- 9 Q. What about Number four?
- 10 A. Number four were sheets of uncut counterfeit moneys
- 11 found at 1361 Jefferson which had not been destroyed
- 12 by the fire.
- 13 Q. All right, and the second page, the first item listed
- 14 on there is what?
- 15 A. This is one of the aluminum plates seized from the
- 16 defendant, initialed and dated. Number two is the same
- 17 thing. Number three, another aluminum plate. Number
- 18 four an aluminum plate.
- 19 Q. All right. Where did those four come from?
- 20 A. They were given to me by the defendant from 25 Wakefield
- 21 Street.
- 22 Q. All right, and what is the fifth item listed on the
- 23 second page of Government's 16 for identification?
- 24 A. That is a box Ancho camera which was seized at the
- 25 Fillmore address.

1 Q. The next is what?

2 A. A can of offset duplicating ink also seized at the same
3 location. The next one is the actual press itself,
4 Model 251, Serial 6715. The next one is scissors, two
5 pairs of scissors. The next one quart of Kodak fixer,
6 solution A. The next one is a can of Kodak hardener,
7 solution B, and the last one is a seven inch by seven
8 inch Ovenex baking tin, all seized at the Fillmore
9 Avenue address.

10 MR. WILLIAMS: Thank you.

11 THE COURT: While Mr. Lalime is looking at that,
12 Mr. Cohen and Mr. Hampshire, can you come
13 up a minute, please.

14
15 (Discussion had between the Court
16 and counsel in another matter.)
17

18 BY MR. WILLIAMS:

19 Q. Getting back, Mr. Zona, to Police Headquarters, I believe
20 you indicated that there came a time when you placed the
21 defendant under arrest, is that correct, and about what
22 time was that?

23 A. That was during the interview, at the end of the interview,
24 about 2:30 or so, prior to going out on the street.

25 Q. Was there any, - can you tell us whether there was any

AFFIDAVIT OF SERVICE BY MAIL

State of New York) RE: U. S. A.
County of Genesee) ss.: v
City of Batavia) Greene Berry Mullens
Docket No. 74-2479

I, Leslie R. Johnson being
duly sworn, say: I am over eighteen years of age
and an employee of the Batavia Times Publishing
Company, Batavia, New York.

On the 19 day of December, 1974
I mailed 2 copies of a printed Appendix and ~~box~~ Brief
the above case, in a sealed, postpaid wrapper, to:

James L. Lalime, Esq.

1710 Liberty Bank Building

Buffalo, New York 14202

at the First Class Post Office in Batavia, New
York. The package was mailed Special Delivery at
about 4:00 P.M. on said date at the request of:

Roger P. Williams, Assistant U. S. Attorney

502 U. S. Courthouse, Buffalo, New York 14202

Leslie R. Johnson

Sworn to before me this

19 day of December, 1974

Monica Shaw

MONICA SHAW
NOTARY PUBLIC, State of N.Y., Genesee County
My Commission Expires March 30, 1975

